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THE DREYFUS CASE.

The Dreyfus affair has at last come to a close. During the five years that have elapsed since the arrest of Alfred Dreyfus in October 1894, the name of no man has so constantly and so prominently found a place in the newspapers. From the very commencement the proceedings in his case have engaged the attention, at times even wearisome, of the whole civilized world. People in all countries have watched his fate with anxious sympathy. The excitement reached its fever-height during the recent trial at Rennes and enormous sums of money were expended by the leading newspapers to provide the public with a daily report of the proceedings. When the verdict of the Court Martial against Dreyfus was announced, the thrill of indignation which ran through the world was unique in its intensity and in its breadth. Seldom has there been a more sublime spectacle than this, of a world in anger at the outrage which had been perpetrated against justice. The quickness with which public opinion was focussed and the quickness of the explosion of feeling which followed are triumphs of the modern facilities of communication. The tension of public feeling has now been reduced by the pardon, however ungracious, granted by President Loubet. It is a strange circumstance that while the excitement outside France was one of sympathy for Dreyfus, the excitement in France was one of unmitigated antipathy to Dreyfus. Now, what is the reason of the importance attached to this case from the very beginning and of the opposite feelings it has evoked within and without France? Briefly stated, the charge against Captain Dreyfus was that he sold important military secrets to Germany. The charge, if duly proved, would certainly have justified the punishment of Dreyfus. But it was not proved in any manner which would satisfy an unbiassed or dispassionate tribunal, and French public opinion was wrought to a state of frenzy which

incapacitated it for forming a calm judgment. Dreyfus has the misfortune to belong to the Jewish race and hatred of his race combined with hatred of Germany and adoration of the army inflamed the minds of the French people against him. To the public outside France, the interest of the case lies in the evidence it affords of corruption in the General Staff of the army, of the callous indifference to justice and humanity bred by the military spirit and of the unfairness of the French criminal procedure to persons accused of crimes. We are, however, more concerned with the legal aspects of the case, the light which it throws upon the French law of criminal procedure and evidence. To enable our readers to form an idea of their procedure, we shall give a very brief account of the case.

Alfred Dreyfus began his career in the army in 1882 as a Lieutenant in an artillery regiment. In 1893 he was appointed probationer on the General Staff or governing body of the French army and was in the latter part of 1894, when the scene opens, a member of that staff. At this time Colonel Sandherr was at the head of the Intelligence Department of the General Staff and Colonel Henry was his assistant. The Intelligence Department had bribed the charwomen at the foreign embassies to pick up and bring to them scraps of letters and documents which had been torn up and thrown into the waste paper basket. In September, 1894, the charwomen at the German embassy handed over to the Intelligence Department the fragments of a letter or *bordereau* which had been received by Colonel Schwarzkoppen, the German military attaché and torn up by him. This *bordereau* offered information in regard to important military secrets and stated that the writer was setting off to the manœuvres. The military secrets of France had for a considerable time been in the possession of Germany and the Intelligence Department was naturally anxious to discover the author of the *bordereau*. Besides the handwriting of the document there were clues furnished by the contents of the document. The writer was probably an officer of artillery and a member of the General Staff and must have attended the manœuvres of 1894. Dreyfus was an officer of artillery and was a member of the General Staff. But he did not attend the manœuvres of 1894 and on the date of the *bordereau* he knew that he

was not to attend. The handwriting of the *bordereau* was pronounced to be different from that of Dreyfus by M. Du Gobert the expert for the Bank of France. But suspicion fell on Dreyfus, because he was a Jew and because he had been known to be of an inquisitive turn of mind. Once suspicion fell upon the unfortunate man, the department went to work in the full belief that he was really guilty and would not admit the possibility of any mistake. In the investigation which followed, there was a disposition in the department, to introduce every matter which might possibly prejudice them against Dreyfus, and to shut out every matter which might prove his innocence or shake their suspicions. This disinclination was an exaggerated form of the tendency of detective officers all over the world never to admit that they have been on the wrong track. But there was a special circumstance in this case, to account for the endeavours made, to fasten the guilt upon Dreyfus. There were two persons who were immediately interested in directing the enquiry into a wrong channel and of whom one had full access to the records of the Intelligence Department. These persons were Colonel Henry already mentioned. and his friend and accomplice Major Esterhazy. Colonel Henry had been in the habit of selling information to the German embassy and his medium in these nefarious transactions was Esterhazy. The *bordereau* in respect of which Dreyfus was suspected had, as a matter of fact, been written by Esterhazy. And his authorship has been subsequently admitted by himself. Colonel Henry was therefore interested in averting suspicion from his accomplice and himself and in fastening it upon Dreyfus. The actual date of the *bordereau* was altogether incompatible with the hypothesis of Dreyfus's guilt, as he had known in May that he was not to attend the manœuvres. The date of the *bordereau* was therefore altered to a date in April. M. Du Gobert having pronounced against the identity of the handwriting, another expert was found in the person of M. Bertillon to swear to the identity. Our readers are aware of the dangers of expert testimony and of the caution with which English judges act upon such testimony. No more signal illustration of the danger of such testimony can be given than this evidence of the handwriting of Dreyfus. Upon the flimsy materials we have mentioned Dreyfus was arrested on the 15th October, 1894, on a charge of treason and thrown into prison, the jailor being under strict instructions

to deny to Dreyfus the use of all writing materials and to prevent him from seeing or communicating with anybody including the members of his family.

No particulars of the charge were vouchsafed to him, and he was in complete ignorance as to the cause of his arrest and imprisonment. During his detention in jail he was visited by Commandant Du Paty de Clam, and was subjected to frequent inquisitorial examinations, with the object of entrapping him into some admission of guilt. These examinations, however, proved fruitless, as the prisoner would not and could not, confess a crime he had not committed. The jailor informed General Mercier the Minister of War that in his opinion based upon the observation of the prisoner's conduct, he was not the real culprit and that the department had gone off on a false track. Dreyfus was eventually allowed an interview with his counsel, Maitre Demange, and he was ordered to be tried by a Court-Martial consisting of seven officers, on the 19th December, 1894. Three weeks before the date of the trial General Mercier wrote to the Figaro that the guilt of Dreyfus was absolutely certain and that he had the most positive proofs of his treason. The spectacle of responsible officers of the Government writing to the newspapers upon a case which is *subjudice* and trying to prejudice the minds of the public against the accused is unintelligible and cannot conceivably happen, in any country where the English law is administered. At the instance of the prosecution the trial took place within closed doors. The *acte de'accusation* alleged that Dreyfus used to work after hours, that it was conceivable, that he might have gained access to the bureaux with improper motives, that his statement to Du Paty de Clam that he might search everywhere, and his surrender of the keys, were clear proof that all compromising documents had been hidden or destroyed, that he persistently denied his guilt and easily got out of the charge owing to the supple character of his mind and that his handwriting was identical with that of the *bordereau*. Of the experts in handwriting two deposed against him and three declared the identity to be uncertain. The only other important witnesses were Du Paty de Clam who gave a history of the prisoner's life and Colonel Henry. The judges, however, were not free from doubt and when they retired for con-

sultation at the close of the case, a secret *dossier* was sent to the President by General Mercier through Du Paty de Clam with instructions to the judges to read it at the close of the case and return it. The secret *dossier* consisted of four documents which have all since been found to be forgeries. These documents were not proved. They were not shown to the accused or his counsel and he had no opportunity of meeting them. One of these documents was destroyed by General Mercier as soon as it was returned to him and a copy of it which was discovered in 1897 was immediately burnt. It was this secret *dossier* that removed all doubt from the minds of the judges and they found Dreyfus guilty of treason and condemned him and sentenced him to degradation and confinement in Devil's Island. Another attempt was made to obtain a confession from Dreyfus, and he was asked by Du Paty de Clam whether he had not merely given up documents of no importance for the purpose of obtaining more valuable ones in exchange. Dreyfus, however, denied the charge altogether. On the day of his public degradation Dreyfus informed Captain Le Brun-Renaud of his conversation with Du Paty de Clam. Captain Le Brun-Renaud, however, forgot a portion of Dreyfus's statement and reported that Dreyfus had said that if he communicated information to Germany, it was with the object of securing more valuable information in exchange. No steps were taken by General Mercier to verify the so-called confession.

In July 1895 Colonel Picquart succeeded Colonel Sandherr as Chief of the Intelligence department. In March, 1896, Colonel Picquart received the fragments of a *petit bleu* or telegram-card from the charwoman of the German embassy. When the pieces were put together it was found to be a confidential communication addressed to M. Esterhazy. In his enquiries about Esterhazy, Colonel Picquart obtained specimens of Esterhazy's handwriting and found it to be identical with that of the *bordereau*, an opinion in which he was fully confirmed by M. Bertillon. Colonel Picquart pressed his superior officer General Gonse to order the arrest of Esterhazy, but the latter refused on the ground that he could not think of going back upon the trial of Dreyfus, that the reputation of the highest Generals was involved in it, and that the confinement of Dreyfus even if unjust was not a matter to weigh against it in the balance. In September, 1896, the fact that Dreyfus had been

convicted upon secret evidence illegally communicated at the close of the case was published to the world in the columns of the *Eclair*. In November, 1896, the *Matin* published a facsimile of the *bordereau* alleged to have been written by Dreyfus. In November, 1896, an interpellation was made as to the possibility of a revision, but General Billot, the Minister of War, declared that the matter was, a *chose-jugee* or, to use the language of our Courts, a *res judicata*, that it was not possible to go back upon the trial and that justice had been done. Colonel Picquart having been found to own a somewhat troublesome conscience, he was sent to Tunis and Colonel Henry was appointed in his place. Colonel Henry actively began the manufacture of a number of letters and telegrams with the help of one Le Mercier Picard with the object of ruining Picquart, saving Esterhazy, and producing fresh proofs against Dreyfus. On becoming aware of the attempts made to ruin him, Colonel Picquart came to Paris and entrusted his lawyer M. Leblois with copies of the correspondence, between him and General Gonse regarding the authorship of the *bordereau*: M. Leblois succeeded in persuading M. Scheurer-Kestner the Vice-President of the Senate of the innocence of Dreyfus: M. Scheurer-Kestner applied to the Premier M. Meline, and to the Minister of War General Billot for a revision of the trial, but in vain.

From that time forward M. Scheurer-Kestner devoted himself to the task of establishing the innocence of Dreyfus and it is one of the most pathetic incidents of this painful story that he died without witnessing the fruition of his labours for the release of Dreyfus. In October, 1897, Esterhazy's stock-broker M. de Castro discovered the identity of the writing of the *bordereau* with the handwriting of his client Esterhazy and communicated his discovery to M. Scheurer-Kestner. On the 15th November, 1897, Dreyfus's brother wrote to the papers accusing Esterhazy of the authorship of the *bordereau* and challenging the Minister of War to prosecute Esterhazy. Esterhazy and Du Paty de Clam, now forged a number of letters with the object of concocting charges against Colonel Picquart and the theory set up by them was, that Dreyfus and Colonel Picquart had made themselves acquainted with Esterhazy's style of handwriting that Dreyfus had in writing the *bordereau* simulated the handwriting of Esterhazy

and that Colonel Picquart had forged the *petit bleu*. A judicial enquiry was held into the conduct of Esterhazy and ended in his acquittal. Colonel Picquart, on the other hand, was found guilty of having communicated General Gonse's letters to his lawyer and dismissed from the army. The scandal of Esterhazy's acquittal and Dreyfus's conviction stirred the indignation of M. Zola who published a scathing attack upon the War Office in the columns of the '*Aurore*' charging the first Court-Martial with punishing a man whom they knew to be innocent and the Second Court-Martial with acquitting to the order of the Government a man who was really guilty. The position of M. Zola compelled the Government to take notice of this attack and to order his prosecution for libel, but though M. Zola had denounced in no sparing terms the infamy of the Dreyfus's trial behind closed doors and with secret testimony, and though M. Zola and his Counsel urged the Court that the whole article should be made the subject of prosecution, it was confined to the single passage in which he charged the Esterhazy Court-Martial with having acquitted to order. The Zola trial is an excellent illustration of the peculiarities of French Criminal Procedure. The opening speech of the Counsel for the prosecution was immediately followed by the opening speech for the defence. The Counsel for the accused is allowed the privilege of having the last word after the prosecutor's reply. Questions are not put to the witnesses directly, but are addressed to the judge and he is asked to put the question to the witness. Witnesses were allowed to speak, not merely to facts within their knowledge but to matters of hearsay and to express opinions and make speeches to the jurors. Witnesses are not examined consecutively for the prosecution or for the defence, but without any order and very often while the examination of a witness is going on, a number of other witnesses are examined to contradict the unfinished testimony of the witness already under examination. The evidence of the witnesses and the speeches of Counsel are punctuated with hisses and cheers, and the remarks of approval or disapproval of the audience. During the examination of General Mercier he volunteered the statement "I say upon my word as a soldier that Dreyfus was a traitor who was legally and justly condemned." He was also allowed to make a long speech to the jury in support of the conviction of Dreyfus. Another witness General De Pellieux said in reference to the

Esterhazy Court-Martial "It was made up of seven brave officers who had shed their blood on the fields of battle while others (looking at Zola) were—I know not where." General Pellieux produced a despatch forged by Le Mercier Picard at the instance of Colonel Henry but purporting to proceed from Colonel Panizzardi, the Italian Military attaché and stating that he was resolved to deny his relations with Dreyfus. The Court refused to allow Zola's Counsel to cross-examine upon this document. General De Pellieux appealed to the jury to save their sons in the army from the butchery which would follow, if the prestige of the Generals was impaired. General De Boisdeffre threatened the retirement of the chiefs of the army, if Zola was acquitted.

On behalf of Zola several distinguished men of letters were produced who declared their belief in the *bona fides* of Zola in his letter to President Faure. The speeches of Counsel on both sides travelled beyond the record and referred to matters about which there was no evidence in the case. Zola's Counsel was allowed in his speech to read long extracts from the newspapers in favour of Dreyfus and his family. Though the presiding judge had ruled that the prosecution had nothing to do with the Dreyfus conviction, the witnesses for the prosecution and Counsel on both sides were permitted to refer to the trial in their speeches. The jury returned a verdict of guilty and after the procedure we have detailed, it would have been surprising, if they had returned a different verdict. Zola was sentenced to one year's imprisonment and a fine of 3,000 francs but on appeal to the Court of Cassation the verdict was quashed on a technical ground and a re-trial was ordered. M. Zola allowed judgment to go by default, and left for England and the Zola episode thus came to an end.

In July 1898 M. Cavaignac, the Minister of War, produced before the Chamber of Deputies the forged despatch written by Picard and stated that Dreyfus had confessed his guilt. Colonel Picquart wrote to the papers denouncing the despatch as a forgery and the German and Italian Governments informed the Minister of War that the despatch was a forgery by Picard under the orders of Colonel Henry. Colonel Henry was then interrogated by the Minister of War and finally confessed that he had committed the forgery under orders for the good of the army and that what we

had done he would do again for the good of the country and of the army. Colonel Henry was then arrested and put in prison, but he was found dead the next morning with his throat cut. Esterhazy left for England with Du Paty de Clam and confessed his authorship of the *bordereau.* A change of ministry followed and M. Brisson the new Prime Minister sent up the case to the Court of Cassation which came to the conclusion that the *bordereau* was written by Esterhazy and that this fact rendered a re-trial of Dreyfus necessary. Dreyfus was accordingly brought from Devil's Island and the re-trial commenced on the 6th of August last before a Court-Martial of seven officers at Rennes. Several ex-Ministers of War and several Generals came forward as witnesses for the prosecution and deposed to their belief in the guilt of Dreyfus. The evidence adduced in the case consisted of the opinions of experts in handwriting, expressions of belief on the part of the witnesses as to the guilt of Dreyfus and many other matters of hearsay which will not be received in any English Court of Justice. Evidence was also adduced to show that Dreyfus had led a loose life before his marriage and it was sought to be inferred therefrom that he was likely to have committed the offence charged against him. On the principles which guided the Court, it would have been possible to convict most persons of any conceivable offence. Letters sent to Court by persons who did not appear before the Court as witnesses were used as evidence without any attempt to call the writers or prove the contents. We have already referred to the peculiar method of cross-examination in French tribunals in which counsel are not allowed to put the question direct to the witness, but are obliged to put it through the Court. The verdict of the Court pronounced by a majority of five against two was as extraordinary as the procedure adopted. Dreyfus was pronounced guilty but under extenuating circumstances. If Dreyfus was guilty at all, there could be no palliation of the offence. The Court of Cassation having found that the *bordereau* was written by Esterhazy and not by Captain Dreyfus, it is difficult to conceive how any Court should have honestly come to the conclusion that Dreyfus sold to the German Government the Military secrets mentioned in the *bordereau.* The pardon granted by President *Loubet* can hardly be deemed to be an act of justice to Dreyfus. Though he has obtained his personal freedom, the stigma of a conviction still remains. He

was entitled to an acquittal and ought to have been acquitted. It is strange that a civilized country like France should possess a criminal procedure so ill adapted to the ascertainment of truth and the ends of justice. Miscarriages of justice and high-handed acts of oppression are no doubt likely to occur in all countries; and in India, we have recently had a flagrant instance of such an abuse of power in the case of the Natu brothers. While in some respects the case of the Natu brothers is far worse, and far more pitiable than that of Dreyfus, for while Dreyfus has had the satisfaction of at least knowing the charge against him and of having had a public trial, however ill-conducted, the Natu brothers have been kept in confinement without even the semblance of a trial and without any intimation to them of what they were accused of. While Englishmen have expressed their indignation at the iniquity of the treatment accorded to Dreyfus, they have been altogether oblivious of the fact that similar or even worse treatment has been accorded in India to the Natu brothers. It must be said, however, to the credit of the English Government that though it may commit people to confinement under antiquated Regulations for so-called political reasons, such cases are rare and that in all criminal *trials* the procedure adopted is far more favourable to the prisoner and far better calculated to serve the ends of truth and justice. If there is one thing for which we have to be grateful to the English Government more than for any other, it is for the administration of the English rules of evidence and the English rules of Procedure in our Courts.

SUCCESSION TO IMPARTIBLE ESTATE.

SENIORITY AND HALF BLOOD.

It was decided by the High Court of Madras that in the case of an impartible Zemindary the brother of the half blood is by reason of seniority of age entitled to the succession in preference to the brother of the full blood but junior in age, vide *Ramasami Kamaya Naik* v. *Sundara Lingasami Kamaya Naik*, I. L. R., 17 M., 422. The family consisting of three brothers was governed by the law of Mitakshara, and its status was that of an undivided and not that of a divided Hindu family and the impartible Zemindary was not the self-acquired or the separate property of the deceased. If

the family was a Bengal family governed by the Dayabhaga Law, there can be no doubt that though the family was an undivided one, the brother of the full blood, (vide *Rajkishore Lahoory* v. *Gobind Chunder*, I. L. R., 1 C., p. 27) would exclude the brother of the half blood, though the latter be senior in age to the former and it is equally clear that if the family were a divided one or the property was the self-acquired or the separate property of the deceased, even under the Mitakshara Law, the brother of the full blood as being nearer of kin would exclude the brother of the half blood, though the latter be senior in age. In the above three cases, the succession is governed by the law of inheritance of which the cardinal text under the Dayabhaga School is the text of Manu, *viz.*, " to the nearest sapinda the inheritance next belongs" and under the Mitakshara School is the text of Yajnavalkya founded upon the above text of Manu, *viz.*, "The wife and the daughter also, both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow-student; on failure of the first among them the next in order is indeed heir to the estate of one who departed for heaven leaving no male issue." (Mitakshara, chapter II, Section I, Placitum 2, Stokes' Hindu Law Books, page 427).

The author of the Dayabhaga applies the text of inheritance both to a divided and an undivided family. If a member of an undivided family dies without male issue, his undivided share descends in the same way as it would if he were divided and the share separated and allotted to him.

The author of the Mitakshara, however, holds that Yajnavalkya's general text of inheritance above quoted governs only the succession to the estate of a separated Hindu and not to the undivided interest or share of a deceased member of an undivided family without male issue.

In the latter case according to his doctrine, there is no descent or inheritance so called, but his undivided share or interest in the joint family property simply lapses to the surviving members of the family.

Under the Mitakshara Law in the case of the property of a divided member or separate or self-acquired property belonging to

an undivided member, succession is by inheritance; and in the case of the undivided share of a deceased member of a joint family, succession to such share is by survivorship. In the former case, the nearer excludes the more remote while in the latter the undivided interest of the deceased devolves on all the surviving members irrespective of the nearness or remoteness, in the degree of propinquity of each of the surviving members, to the deceased.

In the *Saptur* case, *vide* I. L. R., 17 M., 422, if the Zemindary had been a partible one, on the death of the father of the parties, the Zemindary would have devolved jointly upon the two sons by one wife, and the son by another wife—and if after the father's death, a partition had been effected among the three brothers, each taking one-third share, and a contest arose after the death of one of the sons of the joint wife as to the succession to the one-third share of the deceased brother, then there could be no doubt that the deceased's full brother would exclude the half brother.

If no such division had been effected among the three brothers, the undivided share of the deceased brother would, on his death, devolve jointly on the full brother, and his half brother, and if a partition subsequently takes place between the survivors each will take an equal moiety in the whole Zemindary. It will thus be seen that a full brother and a half brother *equally* participate in the undivided share or interest of the deceased brother whereas if the deceased had been divided, his separated share would have devolved only on his full brother to the entire exclusion of his half brother. These are the principles of law which will undoubtedly be applicable to the case if the Zemindary were a partible one.

But as the Zemindary was an impartible one descendible to a single heir, the question was what was the rule applicable to the case reported in determination of such heir. This question is succinctly answered by their Lordships of the Privy Council in *Jogendro Bhupati* v. *Nityanand Man Sing,* I. L. R., 18 C., p. 151, as follows :—

"For determining who is to be heir to an impartible estate, the same rules apply which also govern the succession to partible estate, though the estate can be held by only one member of the family at a time."

In that case which was governed by the law of the Mitakshara, a Hindu father, the owner of an impartible estate died leaving him surviving a legitimate son and an illegitimate son—the former succeeded to the Zemindary and died without male issue but leaving three widows and a daughter. The illegitimate brother who was not divided from the deceased claimed the Zemindary by right of survivorship and their Lordships of the Privy Council affirmed his claim in preference to those of the widows and daughter on the ground that if the property had been partible he would have succeeded to the whole by right of survivorship to the exclusion of the widows and daughters of the deceased.

In *Ranee Sartaj Kuari* v. *Ranee Deoraj Kuari,* I. L. R., 10 A. 272, and 15 I. A., 51, it was laid down that though junior members of an undivided family have no coparcenary or joint rights with the Raja or Zemindar holding an impartible estate, yet for the purpose of determining who was entitled to succeed to the estate on his death the estate must be considered as the joint property of the family. Applying to the *Saptur* case this principle which was acted upon in I. L. R., 18 C., p. 151, it follows that the decision of the High Court was correct.

If the estate were partible the brother of the full blood and the brother of the half blood would be entitled to an equal moiety of the estate and of the undivided interest or share of the deceased brother; and the fact that one was of the full blood would give him no advantage or priority over the other who was only of the half blood. In other words, both of them will be *equally* entitled if the estate were partible.

But as by reason of the custom of impartibility only one of the two can succeed, priority is determined by primogeniture or seniority of age. The family being admittedly an undivided one it follows that the senior in age is entitled to succeed in preference to the junior, both being on a par if the estate had been a partible one.

It was, however, held in the *Tipperah* case. (*Vide Neelkisto Deb Barmono* v. *Beerchunder Thakoor,* 12 Moore's I. A., p. 523) that a brother of the full blood though junior in age was entitled to succeed to an impartible estate in preference to a brother of the half blood who was senior in age. The ground of

decision is expressly stated to be that succession by survivorship is incompatible with the custom of impartibility and consequent sole ownership and that, therefore, the law of succession would be the same as that which would be applicable to the separate estate. This decision of the Privy Council is no doubt sound and applicable to cases governed by the Dayabhaga Law, vide *Rajkishore Lahoory* v. *Gobind Chunder*, I. L. R., 1 C., 27 and *Sheo Soondary* v. *Pirthee Singh*, L. R., 4 I. A., p. 147. But if it be held applicable to cases governed by the Mitakshara School it is at direct variance with the prior and subsequent decisions of the same tribunal and its logical result will be that a widow or the daughter of a deceased Zemindar should take in preference to his undivided brother or cousin.

The *Tipperah* case appears to be really governed by the Dayabhaga Law (*vide Beerchunder Joobraj* v. *Neelkissen Thakoor*, Vol. I., Sutherland's Weekly Reporter, p. 177), and if so the decision is strictly in accordance with that law as expounded in *Rajkishore Lahoory* v. *Gobind Chunder Lahoory*, I. L. R., I C., 27. Though at the time when the Tipperah case was decided, there probably was an erroneous notion at Calcutta that even under the Dayabhaga Law, there was survivorship as an exception to the general scheme of inheritance in the case contemplated by Jimuta Vahana in verse 34, section V., chapter 11 of the Dayabhaga.

In the very next volume of Moore's Indian Appeals, *viz.*, 13th volume, p. 333, their Lordships in an appeal from the Presidency of Madras emphatically overruled the argument which was advanced by the counsel for the appellant therein that the estate in question being impartible must from its very nature be taken to be separate estate, the succession to which was determinable by the law which regulates the succession to a separate estate whether the family be divided or undivided (*vide* p. 336, 337) and held that the mere impartibility of the estate is not sufficient to make the succession to it follow the course of succession to a separate estate (*vide* page 339).

The same principle was recognized and acted upon in *Chowdhry Chintamun Singh* v. *Mussamut Nowlukho Konwari*, L. R., 2 I. A., 263, and several other cases, the latest being the one already

referred to, *viz.*, I. L. R., 13 C., 151. All these cases were admittedly governed by the law of the Mitakshara and the decisions therein are directly at variance with the Tipperah case if the latter were regarded as applicable to a case governed by the Mitakshara School. As already observed the Tipperah case is really a Dayabhaga case though some of the observations in the judgment would seem applicable in principle to every impartible estate whether governed by the Dayabhaga Law or the Mitakshara Law. On the assumption, apparently an erroneous one, that the Tipperah case was applicable to cases governed by the Mitakshara School, the High Courts of Calcutta, Madras, and Allahabad were compelled having regard to the various decisions of the Judicial Committee of the Privy Council to express their dissent from the decision of the same tribunal in that case. *Vide Maharani Hiranath Koer* v. *Baboo Ram Narayan Singh;* 9 B. L. R., 324 to 327; *Naraganti Achammagaru* v. *Venkatachalapati Nayanivaru,* I. L. R., 4 M., p. 267; *Bhawani Gulam* v. *Deoraj Kuari,* I. L. R., 5 A., 548.

The decision of the High Court in the *Saptur* case was in accordance with two of its prior decisions, *viz.*, the one reported in *Naraganti Achammagaru* v. *Venkatachalapati Nayanivaru,* I. L. R., 4 M., 250 and the prior unreported decision in *Ramia* v. *Ranganayakamma* which was followed in that case.

The latter case is referred to and explained by Mr. Mayne in para. 499 and the former in para. 500 of his Treatise on Hindu Law and Usage, 5th edition.

In both these cases the principle laid down is that "when impartible property passes by survivorship from one line to another, it devolves not necessarily on the coparcener nearest in blood but on the nearest coparcener of the senior line."

In these three cases the decision was based on the law of succession by survivorship obtaining in an undivided family possessing partible property *plus* the principle of representation which obtains in an undivided family. In the *Saptur* case according to the said decisions even if the competition had been between the full brother and the half-brother's son, grandson or great grandson, the half-brother having pre-deceased the last proprietor, the decision would have been against the full brother. For in an undivided family a

deceased member is fully represented by his lineal male descendants up to three generations next to him, *vide* Mayne, para. 247. In the *Saptur* case the priority over the full brother was claimed by reason of seniority in age without having to base it upon representation of ancestor who was senior in age to the full brother. The Full Bench decision of the Allahabad High Court in *Debi Parshad* v. *Thakur Dial*, I. L. R., 1 A., 105, followed by a Full Bench of the Calcutta High Court in *Bhimul Doss* v. *Choonee Lall*, I. L. R., 2 C., 379 contains a very clear exposition of the Law of Mitakshara regulating succession in an undivided family and the operation of the doctrine of representation therein. In the case of a separated owner who dies leaving a brother and a nephew, the brother of course excludes the nephew, whether the estate of such a separated owner is a partible or an impartible one.

If he be an undivided member his undivided share in partible joint property would devolve equally on the brother and the nephew and the fact of the nephew being a remoter kinsman than the brother is immaterial and if the estate were an impartible one and the nephew be the son of the brother who was senior in age to the surviving brother, by the principle of representation obtaining in an undivided family the nephew by representing his father takes the property in preference to his uncle.

If as laid down by the Privy Council notably in I.L.R., 18 C., 151, succession to an impartible estate is to be regulated by the rules applicable to partible property except in so far as the incident of impartibility necessitates the vesting of the succession in a single heir instead of in a plurality of heirs the marked distinction which obtains under the Mitakshara School in regard to succession by survivorship in an undivided family aud succession by inheritance to separate property should not be ignored in determining the right of succession to an impartible estate. The cardinal principle of succession to separate or self-acquired estate is that the nearer excludes the more remote. But that principle is entirely alien to the rule of succession by survivorship in an undivided family. Therefore, when one has to trace the succession to an impartible estate in an undivided family, the question as to which of the surviving members is the nearst of kin to the deceased is perfectly immaterial. That, no doubt, is the criterion in all cases under the

Dayabhaga Law and also in the Mitakshara School when one has to trace the succession to the separate estate of a deceased owner. But in an undivided family that is no criterion at all under the Mitakshara School. Under that school it should be determined how the undivided share of the deceased would devolve upon the surviving members, if the estate were partible; and because the estate is impartible, only one of them has to be selected and in the absence of any custom or usage to the contrary, that person should be the one who is senior in age or represents one, who, if alive, would by senioity of age be entitled to the succession. When such a one claims the right of primogeniture by the principle of representation obtaining in an undivided family such claim is based upon law and not upon lineal primogeniture by custom. If in claiming succession to the impartible estate of a separated owner or of one whose self-acquisition it was, a claim by lineal primogeniture were advanced that would have to be established by custom, for, in the case of a separated owner it is contrary to law that one who is remoter of kindred, say, a nephew should claim to succeed in preference to one nearer of kindred, say a brother. In *Achel Ram* v. *Udai Pertab*, L. R., 11 I. A., p. 51, referred to by Mr. Mayne in para. 501 of his treatise on Hindu Law, the last male owner was succeeded by his widow and daughter successively and on the death of the latter a contest arose between two persons claiming as reversionary heirs entitled to succeed on the death of the daughter. The rule of succession applicable to the case, therefore, was the rule of inheritance applicable to separate estate and not the rule regulating the right of succession by survivorship in an undivided family under the Mitakshara School. In that case the plaintiff claimed succession by right of lineal primogeniture in preference to a surviving reversionary heir who was nearer of propinquity to the last male owner. But the Privy Council rejected his claim on the ground that his right based upon lineal primogeniture was not established by custom. The claim advanced by the plaintiff in that case was contrary to the cardinal principle of succession applicable to separate property and, therefore, it could not be recognized unless based on a custom which should be established. But if the claim had been one of succession by survivorship as a member of an undivided family his advancing the claim of lineal primogeniture on the principle of representation obtaining in an un-

divided family would not be one outside the rule of Hindu Law but one based upon and in conformity with it.

Mr. Mayne tries to reconcile all the cases bearing on the subject by deducing therefrom the four rules which he lays down in para. 502 of his book.

The cases are cited and explained by him in paras. 499, 500 and 501 of his book. The Madras cases cited in paras. 499 and 500 relate to succession to an impartible estate by right of survivorship in an undivided family. The Privy Council case referred to and explained in para. 501 in which the claim by lineal primogeniture was advanced related to succession to the separate impartible estate of the last male owner. There is, therefore, nothing to reconcile between the Madras cases and the Privy Council cases. On the contrary, the Madras cases illustrate the rule of succession to an impartible estate on the analogy of the rule of succession by right of survivorship applicable to joint partible property; and the Privy Council decision illustrates the rule of succession to a separate impartible estate on the analogy of the rule of succession to separate partible property.

Mr. Mayne towards the end of para. 499 notices the *Tipperah* case apparently with approval and tries to reconcile it with the Sivaganga case reported in *Katama Natchiar* v. *The Rajah of Shivagunga*, 9 M. I. A., 549. As already explained the *Tipperah* case is perfectly irreconcilable with the previous and subsequent decisions of the Privy Council and of the High Courts of Calcutta, Madras and Allahabad in cases governed by the Mitakshara law, if one assumes that the *Tipperah* case is applicable to cases governed by the Mitakshara School, notwithstanding that the law governing that case was the Dayabhaga Law.

Mr. Mayne has dealt with this question not as fully as one might expect and he has failed to advert to several decisions of the Privy Council bearing on the question.

The first rule deduced by him from the decisions in para. 502 is as follows: "When an estate descends to a single heir the presumption is that it will be held by the eldest member of the class of persons who would hold it jointly if the estate were partible." Applying the rule to the *Saptur* case the half brother would be entitled to succeed in preference to the full brother. For if the

estate were partible, after the death of the eldest brother both his half brother and his full brother would hold it jointly. But the 2nd rule is as follows: " In the absence of evidence to the contrary, the heir will be the eldest member of those persons who are nearer of kin to the last owner than any other class and who are equally near to him as between themselves." If this rule be restricted to the case of succession to a separate impartible estate it is quite correct. But if it be meant to apply to cases of succession by survivorship to an impartible estate in an undivided family it is not correct and is not in accordance with the first rule.

Then the third rule is as follows :—

" Special evidence will be required to establish a descent by lineal primogeniture that is by continual descent to the eldest member of the eldest branch in exclusion of nearer members of younger branches" and if this is restricted to cases of succession to a separate impartible estate the rule is sound and is in accordance with the decision of the Privy Council in *Achel Ram* v. *Udai Pertab,* 11 I. A., p. 51. But if it be meant that in cases of succession by survivorship to an impartible estate in an undivided family special evidence will be required to establish a descent by lineal primogeniture even within the limits of representation obtaining in an undivided Hindu family, the rule will be unsound and not in accordance with the principles of Hindu Law.

The fourth rule is stated as follows :—

" The presumption as to primogeniture of either sort may be rebutted by showing a usage that the heir should be chosen on some other ground of preference" and the rule is quite correct. It was illustrated in the *Saptur* case by the custom set up.

These rules, however, have to be entirely recast by distinguishing cases of succession by inheritance to separate impartible estates from cases of succession by survivorship to an impartible estate which for purposes of succession should be treated as joint family property.

JURISPENDENCE.

NOTES OF INDIAN CASES.

Dharam Singh v. **Angan Lal**, I. L R., 21 A., 301. The cause of action against the son for a personal debt due by the father is distinct from the cause of action against the father himself. The liability of the son to pay the father's debt arises from the so-called pious obligation. When this cause of action arises, whether at the date of the debt itself or at the father's death when the debt was subsisting at the father's death is not the question for consideration in the case under notice. That the son's liability is distinct from that of the father is clear. If so, after a decree has been obtained against the father and it becomes unexecutable against the son by reason of the father's death and execution is for some reason refused, the son can be proceeded against in a separate action if that is within time. If the cause of action against the son arises within the father's life-time, it can only arise when the liability accrues against the father himself. The Madras High Court has held I. L. R., 22 M., 49 that the obligation of the son arises at the same time when the father's liability accrues. This is no doubt the logical result of the decisions of the Privy Council. There will undoubtedly be some anomalies as where the father is indebted, execution being kept alive, the son becomes free because the time has expired from the date of the accruel of the liability. But we fancy it is impossible to steer clear of all anomalies in any view of the matter; and perhaps the logical extension of the Privy Council view is as good as any other view of the question.

Chetan Charan Dass v. **Baladra Dah**, I. L. R., 21 A., 314. Judgment having been reserved and one of the parties having died, the question has been raised whether the Court is competent to pronounce judgment. It is held in the case under notice that judgment might be entered *nunc pro tunc*. This has been the clear English practice and we have now the authority of the Allahabad High Court in accordance with the Bombay Court and an observation of the Privy Council that that practice may well be extended to India.

SUMMARY OF RECENT CASES.

Principal and Agent—Contract by Agent in the name of Principal —Benefit of Agent—Withdrawal from Contract—Ratification by Principal.

In re **Tiedemann and Ledermann Freres** [1899] 2 Q. B.

The question that arose in this case was whether when an agent makes a contract in the name of his principal but really for his own

benefit, it is open to the principal subsequently to ratify the contract and whether if so the right of ratification can be exercised after the persons with whom the agent contracted, having come to know that the agent really contracted for his own benefit have rescinded the contract and refused to proceed with it. The Court of the Queen's Bench (Darling and Channell, JJ.) held that it was well established that the principal could ratify a contract made for him by his agent though without any antecedent authority (see *Wilson v. Tumman*, [1843] 6 M., & W 236, and *Foster v. Bates* [1843] 12 M. & W., 226) that the fact, that the agent really intended to benefit himself did not alter the right of the principal to ratify the contract especially when it was within his power to carry it out, and that under the decision in *Bolton Partners v. Lambert*, 41, Ch., D 295 it was open to the principal to exercise his right notwithstanding the previous repudiation of the contract by the other parties to the contract.

Contractor's Negligence—Employer's Liability—Casual or Collateral negligence—Practice—Separate defences—One defendant paying into Court —Verdict for less amount—Liability of the other for costs.

Penny v. The Wimbledon Urban District Council

[1899] 2 Q. B. 72 C. A.

A contractor under the defendant Council dug up a road frequented by the public and left a heap of soil without any light to warn the passers-by of the state of the highway. A person fell over the heap and was injured. The question was whether the defendant Council were liable for the contractor's negligence. The Court of Appeal (*A. L. Smith, Vaughan Williams, and Romer*, L.JJ.) in confirmation of the decision of Bruce, J. held on the authority of *Pickard v. Smith*, 10 C..B. (N.S.) 470, that where the injury arose not from any casual or collateral negligence of the contractor but from negligence in respect to a matter which ought to have been foreseen from the very nature of the work and provided for, the employer could not escape liability by pleading the negligence of the contractor.

In this case the defendant Council and the contractor had put in different defences. The contractor while raising a defence to the action, deposited 75 £ in satisfaction of the plaintiff's claim for damages. The plaintiff eventually recovered only 50 £ as damages for his injury. According to the rules of the Judicature Act, therefore, the plaintiff was not entitled to any costs from the contractor. The defendant

Council contended that they were not liable to costs either, because if the plaintiff had drawn the 75£ deposited into court by his co-defendant, he would have had no more claim against the council and not having done so he was entitled to costs from none of the defendants in the case. The Court of Appeal overruled this contention and held that if they had adopted the defence of the contractor and pleaded the payment by him, they might have succeeded, but that having raised a separate defence and paid nothing into court in satisfaction of the cause of action against them, they were liable to pay the costs of the plaintiff.

Practice—Judgment by Default—Action to set aside the Judgment for fraud—Claim for malicious presentation of Bankruptcy Petition—No allegation of special damage—Striking out claim as disclosing no cause of action.

Wyatt v. Palmer [1899] 2 Q. B. 106.

A solicitor obtained judgment for his costs behind the back of his client whom he fraudulently induced to absent himself from court and refrain from having the bill of costs taxed in court. He subsequently presented a petition to have the client declared a bankrupt. The client now brought this action to have the judgment declared null and void on the ground of fraud and to recover damages for the false and malicious application to the court to have him declared bankrupt. It was contended by the defendant that a judgment by default could not be questioned in a separate action for fraud and that the claim for damage could not be sustained without an allegation of special damage. The court of appeal (*Lindley, M. R. and Rigby, L.J.*) in affirming the decision of Kennedy, J. said that there was no authority to support the view that the judgment by default any more than other judgments were not liable to be set aside for fraud in a separate action, that the existence of a summary method of setting aside a judgment by default did not put an end to the right of the plaintiff to impeach the judgment by action; but that in a proper case it might be advisable that the court should insist upon the plaintiff paying the amount due upon the judgment before allowing the action to proceed. On the other question they said that it was not quite clear that there should be an allegation of special damage but that whatever might be the law upon the subject it was not so clear a point as to justify the court in striking out the claim as disclosing no cause of action or as frivolous or vexatious.

Administration action—Distribution among next-of-kin—Previous knowledge of Proceedings—Delay—Laches.

Mohan v. Broughton [1899] Ch. P. D. 211.

On the death of one Coghlan, letters of administration were granted to one Broughton as the deceased's cousin and next-of-kin on the 24th December 1892. Then a suit was commenced in the Chancery Division for the administration and distribution of the assets among the next-of-kin of the deceased. On the 10th March 1893 a claim was put forward by one Crosdil to be exclusively entitled to the estate of the deceased on the ground that the administrator and the other next-of-kin between whom the Chancery suit was proceeding were not related to the deceased as the deceased's mother whom they claimed as their aunt was illegitimate having been born before the marriage of her parents. This claim was dismissed and the clerk certified on November 3, 1893, that the parties to the Chancery suit were the only next-of-kin of the deceased. On the 31st May 1894, the plaintiff in this case first put in a claim, alleging that she then came to know of her relationship to the deceased and that she was entitled as first cousin once removed. On the clerk pointing out that even if she proved herself to be the first cousin once removed, she would not be entitled to any share as there were first cousins in existence, the proceedings were stopped and the plaintiff took no further steps to prosecute her claim. On December 11, 1894, an order was made for distribution which was carried into execution immediately after. On April 21, 1896, a final order was passed directing the payment of a small balance to Broughton. On the 7th June 1898 the present action was commenced on the allegation that the parties to the Chancery suit had no claim because Emma Broughton the mother of the deceased was illegitimate. This action was resisted on the ground that the question of the legitimacy of Emma was *res judicata*, because it had been already decided and because it ought to have been raised by the plaintiff in her previous claim, and that the plaintiff was guilty of such laches as debarred her from prosecuting her claim. *Gorrel Barnes*, J. held that it was unnecessary to decide the question of *res judicata*, that the plaintiff having become aware of the proceedings and of the question of Emma's legitimacy as early as 1893, and yet not having taken any steps to push on her claim till more than 3 years after the distribution of the assets among the next-of-kin she must be deemed to have acquiesced in the Chancery proceedings and could not now be allowed to claim a refund of the assets already distributed.

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Foreign judgment—Divorce—Irregularity in Procedure—Recognition by English Court—Jurisdiction.

Pemberton v. Hughes [1899] 1 Ch. 781, C. A.

An action was brought by a widow for a declaration that under a settlement executed by her deceased husband she was entitled to an annuity of £200 upon the security of certain properties which were settled upon her husband and others successively for life with a power to create a rent-charge upon them for the benefit of the wives of the several tenants for life. The persons who became entitled to the properties in possession at the death of her husband, disputed her claim on the ground that she was not validly married to the deceased tenant for life. This plea was based upon the fact that she and one Erwin were domiciled and married each other in the State of Florida in 1884 and that the decree for divorce passed in 1888 in favour of her husband Erwin in an undefended action for divorce on the ground of her ungovernable and passionate temper was invalid because ten clear days did not intervene between the date on which the writ was issued against the defendant and the day on which it was returnable, as required by the rules of procedure obtaining in Florida Courts. This plea was allowed by *Kekewich*, J.

On appeal it was held by the Court of Appeal (*Lindley*, M. R., *Rigby* and *Vanghan Williams*, L.JJ.) that where the foreign court was competent to entertain the suit and to require the parties to attend and answer the suit in court, a decree passed by it will not be questioned in English Courts unless it offends against English views of substantial justice and that a mere irregularity in the application of municipal rules of procedure was not a ground upon which the English Court would go behind the adjudication of a foreign court.

Fraudulent conveyance—Confusion with the property of the person to whom conveyed—Creditor's action assets. Following—

In re **Mouat. Kingston Cotton Mills Company v. Mouat,** [1899] 1 Ch. 831.

Where a voluntary assignee of two policies of insurance collected the amount of the policy on the death of the assignor and advanced it together with other monies of her own upon a mortgage and on the estate proving insolvent, creditors brought an administration action impeaching the validity of the assignment under the statute of Elizabeth

and applied to the court for an order directing the payment of the moneys into court or appointing a receiver, it was held by *Stirling*, J. that it was clear that if the assignment was invalid under the statute of Elizabeth, the court had jurisdiction to secure the fund as assets of the deceased liable for his debts, that the fact that the moneys belonging to the deceased had been mixed with those of the assignee did not oust the jurisdiction of the court so long as the moneys had not passed into the hands of a *bona fide* purchaser for value without notice and that the assignee ought not to be allowed either to receive the mortgage moneys so far as they represented the amount of the policy or to part with the mortgage except after notice to the plaintiffs and with the sanction of the court.

Bankruptcy—Fraudulent preference—Breach of Trust—Conveyance to Beneficiary—Bankruptcy Act, 1883, *s.* 48.

Sharp v. Jackson [1899] A. C., p. 419 H. L. (E).

A trustee had committed breaches of trust and on the eve of his bankruptcy transferred an estate of his to a trustee for the purpose of raising money thereby and rectifying the breaches of trust committed by him. Subsequently on his own application he was declared a bankrupt and his trustee in bankruptcy claimed to have the alienation set aside on the ground of fraudulent preference. *Vaughan Willliams, J.*, in the court of first instance and the Court of Appeal consisting of *Lord Esher* M. R. and *A. L. Smith and Chitty*, L.JJ., gave judgment for the defendants. On appeal the House of Lords agreeing with the Court of Appeal held that in order to make out a case of fraudulent preference it was not sufficient to prove merely that an advantage had been given to one creditor over another, but it must be proved further that the preference was an act of unrestrained voluntary choice on the part of the insolvent, that therefore, a preference whether resulting from external pressure brought to bear upon him by the creditor as in *ex parte Taylor*, 18 Q. B. D., 295 or from the internal pressure of the apprehension of impending danger real or imaginary as in the case of *Thomson* v. *Freeman* (1886), T. R. 155, was equally involuntary and could not be said to be a "fraudulent preference" or even a "preference" in the correct sense of the word and that the conveyance, brought about as it was, from an apprehension of a near prosecution for breach of trust, could not be avoided on the ground of fraudulent preference within the meaning of the Bankruptcy Act.

Company—General Meeting.—Director's interest in the Resolutions—Omission to state in Circular—Conditional notice of Meeting.

Tiessen v. Henderson [1899] 1 Ch. 861.

Two questions arose in this case, whether when the circular giving notice of a general meeting of a company for the purpose of passing certain special resolutions did not mention that the directors of the company were interested in the passing of the resolutions, the resolutions passed by the meeting could be avoided on the ground of insufficient notice; and whether a notice of two meetings to be held successively for the consideration of two alternative resolutions (the second resolution to be taken up in the event of the first being rejected), was a valid notice.

On the first point *Kekewich* J. held, following the case of *Kaye* v. *Croydon Tramways Company* [1899] 1 Ch., 358, that since the case of *Foss* v. *Hardbottle* [1843] 2 Hare, 461, which practically decided that the absent and dissentient members of a company were bound by the vote of the majority, it was the duty of those who convened a general meeting to put the matter fairly before the meeting and in order to do so cause to be circulated among the shareholders all informations necessary to enable them to decide whether they ought to be present at the meeting or whether they might safely leave it to decide for them, that in this case the material fact of the interest possessed by the directors in the resolutions not having been notified to the shareholders, they were entitled to avoid the resolution passed without such disclosure.

On the other point he held that the case of *Alexander* v. *Simpson*, 43 Ch. D. 139 on which reliance was placed in support of the contention that the notice was invalid, had no application to this case, that here there was no uncertainty as to when or where the meeting was to be held as there was in that case, and that the mere fact of the two meetings being formally different and of the consideration of the second resolution being conditioned on the rejection of the first, did not make the notice invalid.

Mortgage—Power to sell out of Court—Sale to Solicitor—Suit to cancel—Laches.

Null v. Easton [1899] 1 Ch. 873.

The executrix of a mortgagee of reversion having obtained probate sold the reversion to a solicitor in *bonâ fide* excercise of the power of sale out of court reserved by the mortgage. The solicitor gave immediate notice of the sale to the purchaser of the equity of redemption

from the reversioner. The purchaser of the equity brought this action after the lapse of ten years to set aside the sale on the ground that a sale to the vendor's own solicitor was invalid. On the evidence in the case it was found that the solicitor had acted for the executrix in obtaining probate, that on being subsequently asked by her to find a purchaser for her, he with great reluctance promised to become the purchaser himself if she found nobody else to take it and that finally he purchased it for more than its actuarial value.

On these facts *Cozens-Hardy* J. held that the mortgagee was not a trustee for sale on behalf of the mortgagor, that according to the most recent cases (see 40 Ch. D. 395 and [1897] A. C. 180) it would be impossible to impeach a sale made in good faith and without any unfairness to the mortgagor, that moreover the solicitor was in no way acting for the vendor at the time of the sale to him and that even supposing that he was her solicitor and could not legally buy the reversion, the right to avoid the sale was lost by laches and acquiescence on the part of the plaintiff who knew of his rights 10 years before the date of the action.

Vendor and Purchaser—Action for specific performance—Disorderly house.

Hope v. Walter [1899] 1 Ch. 879.

A certain house was sold by auction. The description given of the house was in all respects correct and unambiguous. But the tenant who was in possession used the house as a disorderly house, of which fact the purchaser subsequently became aware and refused to complete the sale. Under the terms of the lease the tenant was liable to be ejected without notice if he used the house in a disorderly manner.

In the action for specific performance brought by the vendor, it was admitted by the defendant that he was not aware of the misuse of the house, but it was contended for him that both parties having been under a mistake as to the property put up for sale, the defendant was entitled to rescind the contract and that the court ought, in its just discretion, to refuse specific performance on the ground of hardship.

The Court held that according to the observations of *Wigram* V.C. in *Lucas v. James*, 7 Hare, 410, the existence of a nuisance in the house unknown to the parties was not a ground upon which a sale of specific property could be avoided, especially where the purchaser could, under the terms of the tenancy, expel the tenant without notice in case of disorderly user.

CORRESPONDENCE.

To

THE EDITOR,

"*Madras Law Journal.*"

SIR,

I observe in your issue for August last in discussing the question of "Primogeniture among Mothers" you say at p. 278. "In the Uttumalai case Mr. Justice Best, though he does not definitely decide the point, strongly indicates his opinion that when the succession is to the son and not to the husband, priority of marriage is not the criterion for determining the right of primogeniture." Such, however, is not an inference that can be properly drawn from the judgment which is reported in I. L. R., 18 M., 277. The following is an extract from the judgment (p. 280):—"As has been contended on behalf of appellant seniority in the family of the husband must be calculated from the date of the entry of each wife into that family by marriage, &c. So calculated, the appellant is clearly the senior wife—the *Dharmapatni*, the wife married from a sense of duty" and the attributes for her we then mentioned. The words that follow, "However the question here is not as to the succession of wives to a husband, but of a mother to an adopted son" cannot be taken to indicate an opinion that a different method of estimating seniority would have to be adopted in the latter case.

Yours faithfully,

12th October 1899. J. W. B.

JOTTINGS AND CUTTINGS.

We beg to acknowledge with thanks receipt of the following publications:—

The Indian Court Fees Act by Dasai Narotam to be had at *Srinivasa Varadachari and Co., Madras*:—Price Rs. 3-0-0.

The Hindu Law with Sanskrit Texts by P. Adinarayana Patrc, printed at the *Varthamanatarangini Press, Madras.*

Commentaries on the Code of Civil Procedure by Hukm Chand, M.A., printed and published by *The Bombay Education Society Press.*

Hindu Law relating to the liability for debt and alienation for the same by V. Suryanarayana Pantulu, printed by *D. V. Kristnan and Co., Bellary.*

Sind Sadar Court Reports, Vol. 1., No. 3. (*in exchange.*)

The Bombay Law Reporter for September (*in exchange*).

The Albany Law Journal for September (*in exchange*).

The Calcutta Weekly Notes for September (*in exchange*).

The Allahabad Weekly Notes for September (*in exchange*).

The Green Bag for September (*in exchange*).

The Canadian Law Times for September (*in exchange*).

The Canada Law Journal for September (*in exchange*).

The American Law Review for September and October (*in exchange*).

The Kathiawar Law Reports, fron January to October (*in exchange*).

The Chicago Law Journal, Vol. IX., parts 1 to 7 (*in exchange*).

The Ceylon Law Review, Vol. I., No. 4 (*in exchange*).

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The Bench and the Bar :—His honor Mr. Joseph.—We have often had occasion to remark that the successful administration of justice requires the maintenance of friendly relations between the Bench and the Bar. Both interest and duty combine to make the members of the bar habitually respectful and deferential to judges. But we are sorry we cannot say that all judges realize it to be their interest or duty to adopt a courteous and considerate tone towards the practitioners appearing before them. We think it is the duty of the Judges of Superior Courts to impress upon the Judges of Subordinate Courts the necessity of a considerate treatment of the Bar. We regret to note that some of the District Judges do not sufficiently realize the obligations of courtesy in their relations with the Bar. We have been told that the relation between Mr. Joseph, District Judge at Trichinopoly, and the practitioners appearing before him have been neither pleasant nor smooth. Quite recently some Vakils from the High Court appeared before Mr. Joseph and from what we hear of what passed at the hearing of the cases in which these gentlemen were engaged, Mr. Joseph appears to be both discourteous and utterly ignorant of the forms of forensic speaking. One of these Vakils referred to the contentions of his opponent by saying " you contend " and he proceeded to meet the argument. This offended Mr. Joseph who seems to think that a practitioner must

not use the word *you* at all on the ground that if it is addressed to the Judge it is disrespectful, and if it is addressed to the opponent, the vakil has no right to do so. Mr. Joseph found fault with the vakil for his language and insulted him by charging him with ignorance of English and want of respect to the Court. While we do not desire to adopt the *tu quoque* argument we cannot help thinking that it was the District Judge who displayed rudeness and ignorance of English. The other vakil we referred to began one of his arguments by saying "suppose so and so." The District Judge at once interrupted him and said that he was not going to make any supposition. The vakil had then to begin his argument by saying "I will suppose so and so." We are told that Mr. Joseph's treatment of the local bar is worse. Rude interruptions of this kind must necessarily disconcert any practitioner and interfere with the due discharge of his duties. Mr. Joseph does not seem to be aware that even in addressing Judges or even much higher officials like the Governor or the Viceroy, the use of the words you or your is permissible. Mr. Joseph will do well to have a copy of Webster's Dictionary on his table in the court-house.

Friction between the Bench and the Bar is not a merely personal matter. It is apt to result in great injustice, for, once in a temper, the Judge is apt to refuse a patient hearing of the practitioner or fall into an attitude of hostility to the party whom the practitioner represents. The Bench loses greatly in dignity and the Public loses its confidence in the impartiality of the Court.

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Mr. Joseph again :—Mr. Joseph seems to be a man of peculiar ways. Criticism renders him more obstinate and he is more incorrigible when his errors are pointed out. The High Court has in numerous instances set aside his judgment as not in conformity with S. 574 of the Code. His judgments in criminal cases have in several instances been shown to be one-sided; and yet he has not shown himself capable of profiting by criticism. Sometime ago he put a notice calling upon practitioners to give him a list of the authorities proposed to be quoted by them in each case, a day previous to the hearing. He appears to have asked the Superintendent of Police to enquire how the savings of Legal Practitioners are invested to ascertain whether any of them are doing the business of money lending. We do not know how long Mr. Joseph is to be permitted to indulge in his career of wanton insult to the Bar. As a member of the Covenanted Civil Service he appears to feel that the High Court can do him no harm. But the Government can. We hope some body will invite their attention to him.

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Ethics of Advocacy:—Our readers are likely to have noticed an important extract we made in a former issue from an article in the Law Quarterly Review upon the Ethics of Advocacy. Attention was pointedly drawn to the subject by Mr. Justice Subrahmanya Aiyar of the Madras High Court in the course of the hearing of a second appeal. The question dealt with in the extract and by Mr. Justice Subrahmanya Aiyar related to the duty of practitioners in the citation of cases against their clients. Is a practitioner bound to cite cases that are in point though in support of the opposite side? The question is not altogether easy of solution and the answer depends a good deal upon an exact understanding of the relation of the profession to the Bench. One fact must be remembered that the members of the profession are not the mere agents of the parties for whom they appear. The duty of the mere agent to act entirely in the interests of the principal is perfectly clear. But every agent that a party may select is not admitted to the ranks of the profession. The body is one specially created and the suitor is at liberty to employ any member of that select body. Now, if the conditions of the existence of the profession are that every member should aid the Court with the knowledge he possesses on any question whether for or against his client, the answer to the question already put would be clear. But in the absence of a statutory or any other definition of the conditions under which the profession is called into existence, the standard of duty depends upon the general understanding of the profession as handed down through generations of lawyers.

If there is an understanding that the practitioner is expected to cite all cases for or against his client, there is no violation of the duty he owes to his client or any betrayal of his interests. The question then resolves itself into whether there is such an understanding by common consent. If there is not, would it conduce to the best interests of the public that there should be implied such a condition attaching to the practice of the profession. We think that in cases of this description whatever difficulty there may be in answering particular questions which may be on the border land, the general line of demarcation is clear. A practitioner who is regarded as an officer of the court and enjoys privileges which a mere agent can never enjoy is bound to inform the Court if he is aware of any cases in point that militate against his client's case. If in his opinion the cases are distinguishable, or it is difficult to decide whether the case seemingly against him is really so, he is not bound to decide the question and thus usurp the functions of the Judge. It cannot be said that he is bound to look up authorities that are against his client, for such a view will tend to the extinction of the profession itself. The prin-

ciple of each party retaining an advocate is that the best that can be said on each side should be brought up before the court to enable it to arrive at a satisfactory conclusion. It is not salutary to lessen the weight of responsibility by making the advocate on each side a judge for the time being. The work of the court will be best performed by the advocate on each side doing the best for his client.

Such a duty is not necessarily inconsistent with the advocate being required to state to the court what he knows to be directly in point and against him. The suppression of that knowledge has the necessary appearance of sharp practice; and both in the interests of individual morality and of the public at large he ought to be made to do that duty even, if necessary, under penalties.

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Lord Watson :—The death of Lord Watson is an Imperial as well as a National loss. The unanimity with which the legal profession throughout the dominions of the Queen will record this verdict, as the news of the fresh blank in the ranks of our judiciary spreads, will take the non-legal world by surprise. The tribunals in whose labours Lord Watson has for almost twenty years taken so great a part, are unfamiliar to the ordinary *habitues* of the Law Courts. The cases on which they adjudicate are seldom sensational and usually raise issues of pure and often not even of English Law. Add to these considerations the facts that Lord Watson's forensic career had been pursued in Scotland, and that during his judicial life in England, with characteristic modesty and directness of purpose, he confined himself strictly to the work that he had come here to do, and it is not difficult to understand the astonishment with which many people will learn that in the estimation alike of Bench and Bar, the unassuming Scotch law lord who has just passed away was one of the greatest judges of the Century. There can be no doubt, however, that this is the position that Lord Watson will take and retain in our judicial history. That a lawyer trained under a legal system so essentially different in many of the vital points from the English as that existing under the law of Scotland, should have been able to bear a dignified and efficient part in the decision of English appeals, would have been of itself no slight achievement. Lord Watson's career at the bar had been practically a failure. But he had found his true vocation on the Bench, and he was fully aware of the fact and not long in showing his consciousness of it. He made himself a profound English lawyer. Within two years after his elevation to the Bench he delivered an elaborate judgment on a highly technical question as to prescriptive right to a several oyster fishery (*Goodman* v. *The Mayor of Saltara*), and from that time forward

down to the very end of his judicial career he held his own with a succession of intellectual giants—Cairns, Selbourne, Blackburn, Herschell, and the rest—grappling as ably as they did with problems with which he could have had little practical acquaintance before he became a judge, and permanently enriching the literature of English law. It was, however, in the Judicial Committee of the Privy Council that Lord Watson's great strength lay. His profound knowledge at once of English, Scotch, and Roman law peculiarly fitted him for dealing with the vast system of Imperial Jurisprudence which that tribunal has to administer; and in the services which he rendered to it he has had no superior, if indeed he can be said to have had an equal. The law as to the interpretation of British North America Act, the elucidation of the Roman Dutch Law to *legitimatio per subsequens matrimonium*, the conditions under which the prerogative right to hear appeals in criminal cases will be exercised, the immunity of consular judges from legal proceedings for acts done in their judicial capacity, the so-called 'Matrimonial domicil,' these and other numerous other subjects of not less importance owe their present definiteness, coherence, and accordance with sound public policy largely to the touch of Lord Watson's moulding hand. As a judge, Lord Watson had his shortcomings. He was prone to interrupt the arguments of Counsel, and his interruptions sometimes tended to assume proportions strongly reminiscent of a Scotch sermon of the olden time. But he was always open to argument; and he never failed in good humour, courtesy or consideration :—*The London Law Journal.*

[We beg to join in the humble tribute paid by our Contemporary to Lord Watson and cannot but add that the Judicial Committee of the Privy Council will be appreciably weaker by the loss of the striking personality of Lord Watson.—Ed.]

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Damages—Breach of Contract for Adoption.—In *Sandham* v. *Grounds*, decided in the U. S. Circuit Court of Appeals, Third Circuit, in May, 1899, it was held that the measure of damages for breach of a contract by one person to adopt another and make the latter an heir, under the law of Pennsylvania, is not the value of the share of the promisor's estate at his death which would have been inherited by the promisee, but the value of the services rendered or outlay incurred by the promisee on the faith of the promise, with interest.

It was further held that where a contract for adoption was to be performed in a certain State, and the estate to which the person to be adopted would thus have become an heir is there situated, the law of

such State governs as to the measure of damages for a breach of the contract.

The court said:

The plaintiff in this action brought her suit against the defendant, as administratrix of Samuel Smith, to recover damages for the breach of a contract entered into between the plaintiff and said Smith in his life-time, in and by which said Smith agreed that he would take the plaintiff (who was his niece) from her home in Ireland to America, adopt her as his daughter, and that he would so provide that at his death she should receive one-half part of his property. The plaintiff accordingly came to America with her uncle, and for a short time continued to live under his care and protection. During her stay she rendered no service, and after her departure, at the end of some sixteen months, she did not return to him. Smith never took any steps looking to the adoption of the plaintiff as his daughter according to the form of the statute of the State of Pennsylvania, but did so adopt an inmate of his house, who was a relative of his wife. The contract between Smith and the plaintiff was to be performed in the State of Pennsylvania, where Smith resided, and where he afterwards died intestate. Upon the trial of the cause the learned judge charged the jury, *inter alia*, as follows:

"Upon the question of the rule of damages the court charges the jury that for the breach of the alleged contract the measure of damages is not the value of decedent's estate at the time of his death, but the value of the services the plaintiff rendered the said Smith while she remained with him, and also any pecuniary outlay or expense she was subjected to or incurred, with interest."

To this part of the charge exception was taken, and the only question argued before us was whether the measure of damages was correctly stated. We cannot doubt that the damages in this case must be determined by the laws of the State of Pennsylvania, where the contract was to be performed, and where the assets of Smith's estate are properly distributable. We find, upon reviewing the decisions of the highest court of that State, that the question here at issue was set at rest in *Graham* v. *Graham's Ex'rs* (34 Pa., St., 475), in which the case of *Jack* v. *McKee* (9 Pa., St., 240), holding a contrary doctrine, was carefully considered and expressly overruled. In *Graham* v. *Graham's Ex'rs* (*supra*) the decedent agreed with two distant relations that, if they would come and live with him, they should share his property equally with his nephews after his death. He failed to carry out

his agreement, and suit was brought against his executors to recover the value of the promised shares of his estate. The plaintiff offered to prove the value of the decedent's estate, and the share of each nephew, for the purpose of showing the damage sustained by the plaintiff. To this offer the defendants objected on the ground that the measure of damages was the value of the services rendered, and was not to be governed by the value of the decedent's estate. *Strong*, J., said:

"Without pressing the insufficiency of the proof of the contract, * * * it by no means follows that the measure of damages in an action for its breach is the value of the thing promised at the time of the breach. *Jack* v. *Mckkee* (*supra*) is no longer a rule. This court has returned from the departure which was made in that case."—*The Albany Law Journal.*

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Action by wife for Alienation of husband's affections.

LIABILITY OF PARENTS OF HUSBAND'S MISTRESS, ALLEGED TO HAVE INDUCED AND PROCURED COMPLETE ABANDONMENT OF WIFE.

New York Supreme Court—Appellate Division—First Department. July, 1899.

Present: Hons. Charles H. Van Brunt, P.J.; George C. Barrett, William Rumsey, Edward Patterson and George L. Ingraham, JJ.

Marie Kuhn, Appellant, *v.* Friedhold Hemmenn et al., Respondents.

Appeal by the plaintiff from a judgment entered upon the dismissal of her complaint at Trial Term.

The action was brought to recover damages for alienation of the affections of plaintiff's husband by the defendants. Plaintiff was married to Charles Kuhn in 1890, and in 1892 they moved to an apartment house where the defendants, who were the owners, resided. The defendants' daughter, Elsie Hemmenn, resided with them, and in 1893 Kuhn commenced an adulterous intercourse with this daughter. Discovering, in May, 1894, that she was in a delicate condition, he took her to an apartment house on Fifty-sixth street, where a child was born to them in July, 1894. The defendant Barbara Hemmenn frequently visited them at this place, and they were known there as Mr. and Mrs. Kuhn. In 1895 and 1896 they lived together as man and wife in a house on Seventy-seventh street, and while living there were

frequently visited by both defendants. At the time of the birth of the child above referred to, defendant Barbara Hemmenn said to the midwife who was commiserating her on her daughter's unfortunate predicament: "No matter, it may come out all right; may be she takes money and goes away, and he can marry her then." In 1894 Charles Kuhn, in the presence of Friedhold Hemmenn, referred to him as his father-in-law, and Hemmenn at other times spoke of Kuhn in the same year as his son-in-law, and of his daughter Elsie as Kuhn's wife. During all this time, and up to the date when she left for Europe in 1896, the plaintiff was living with her husband in the same house with the defendants, on good terms with them, but was entirely ignorant of the circumstances above referred to. Her husband was earning a good salary, and he was her sole support. She knew of Elsie Hemmenn's condition, but had been told by both defendants that a man named Heckman was responsible therefor. She knew nothing of her husband's infidelity until her return from Europe in 1896. Admissions of Friedhold Hemmenn were proved to the effect that he furnished money to Kuhn to stand the plaintiff to Europe, and that he promised to pay all the cost of divorce proceedings and to set him up in business if he would marry his daughter. It was also shown that shortly after the departure of the plaintiff for Europe both defendants stated to friends of hers, who had ascertained the true situation, that she "was not worth to have a man like this," and that it was "a pity such a fine, elegant man should be married to such a common, ordinary woman." Within a short time after plaintiff's departure Kuhn and Elsie Hemmenn moved into the house adjoining the defendants, which was also owned by them, and a few months later into the very apartments in the defendants' house formerly occupied by the plaintiff and Kuhn; and they lived there as man and wife. In May, 1896, and while plaintiff was still in Europe, and in ignorance of all these facts, Kuhn and Elsie Hemmenn went through a marriage ceremony, which was performed by a Lutheran minister, who had been for many years a personal friend of the defendant Friedhold Hemmenn. The latter accompanied them, and when the clergyman (who relied solely upon Hemmenn's word) inquired whether Kuhn had been divorced with a right to re-marry, he replied that "it was all right." Hemmenn also signed the marriage certificate as a witness. On the same day the child was baptized by a minister of another denomination. Plaintiff returned from Europe shortly after this, and found Elsie Hemmenn living as Mrs. Kuhn in the apartments which had been occupied by Kuhn and herself when she went away. Charles Kuhn had then disappeared.

Isidore Hershfield for appellant; *Frederick H. Ernst* for respondents.

BARRETT, J.—It is well settled that a wife may maintain an action against one who has enticed her husband from her, or deprived her of the comfort of his society (*Bennett* v. *Bennett*, 116 N. Y., 584; *Jaynes* v. *Jaynes*, 39 Hun, 40; *Baker* v. *Baker*, 16 Abb. N. C., 293; *Breimann* v. *Pasch*, 7 Abb. N. C., 252; *Westlake* v. *Westlake*, 34 Ohio St., 621.) The defendants evidently misconceive the nature of the present action, for they content that it cannot be successfully maintained because of a lack of evidence to show that they had any knowledge of the improper relations existing between their daughter and plaintiff's husband until the child was born. They also assume that the entire wrong to the plaintiff was consummated when Kuhn entered upon his adulterous life with Elsie Hemmenn, and that no act of theirs subsequent thereto could add to the plaintiff's injury. They insist that the plaintiff's only remedy is a possible action for damages against their daughter. Their contention overlooks the fact that this action is not to recover damages sustained by the plaintiff as a result of the criminal conversation of her husband with Elsie Hemmenn, but for the loss of *consortium*. This is plainly the gravamen of the complaint. The damages claimed are alleged to have been sustained by reason of the plaintiff's deprivation—resulting from the defendants' acts and inducements—of the "comfort, aid, assistance, affection, support and maintenance" of her husband. Mere marital infidelity would not suffice to maintain such an action, for marital infidelity alone did not cause the wrongs of which the plaintiff is complaining. There is no evidence whatever to show that she was in any way deprived of the "comfort, society, aid, assistance, affection, support and maintenance" of her husband up to the time when she left for Europe. It is true that he was then, and had been for some time previous thereto, maintaining a mistress with whom he passed a portion of his time. But of this the plaintiff was in complete ignorance. He still continued to live with and support her; and he ostensibly fulfilled all his marital relations. It is clear, then, that there was up to this time no such alienation of affections as would have entitled the plaintiff to maintain an action like the present against these defendants (*Romaine* v. *Decker*, 11 App. Div. 22; *Buchanan* v. *Forster*, 23 App. Div. 344; *Hodecker* v. *Strickler*, 59 N.Y. Supp. 515, aff'd in 20 App. Div. 245).

Thus the only injury which plaintiff suffered up to the time of her departure for Europe was the moral injury resulting from the violation of her husband of his marital allegiance. It is for the additional wrong which the defendants subsequently caused to be inflicted upon her that she brings this action. This additional wrong consisted in the entire

abandonment of the plaintiff by Kuhn, his entering into a bigamous marriage with the defendants' daughter, and his taking the latter to the very apartments in the defendants' house which he had previously occupied with the plaintiff. This was the loss of the "comfort, society aid, assistance, affection, support and maintance" complained of by the plaintiff; and that loss, and the defendants' responsibility therefor, were sufficiently shown, at least *prima facie*. The plaintiff was living with her husband in apparent peace and contentment up to the time of her departure for Europe. Sometime previous thereto the defendants talked of taking steps to get her out of the way. This was because of Kuhn's relations with their daughter, of which they were fully aware. Their admissions were given in evidence to the effect that they had told Kuhn that they would pay for a divorce and set him up in business if he would marry their daughter, and that they furnished him the money to send the plaintiff to Europe to get her out of the way. It was proved, too, that they connived at and encouraged the bigamous marriage with their daughter. We also find that they freely told various people that they considered Kuhn's lawful wife a common woman, much beneath him, and that they were doing all in their power to separate him from her. How well they succeeded has already been shown. If they had taken no steps at all in the matter, Kuhn might never have wholly abandoned his wife. At any rate, there was enough evidence to warrant the inference that they induced Kuhn to send her to Europe, with the idea of eventually getting rid of her entirely, and that by their influence and inducements they finally accomplished this latter purpose. Upon all the testimony it was certainly a question for the jury whether their wrongful influence and inducements were the cause of Kuhn's finally abandoning the plaintiff (*Remsen* v. *Hay*, 14 Week. Dig. 443). They cannot escape the consequences of their acts upon the plea of parental solicitude. While we may sympathise with them as parents, we cannot justify the means which they adopted to effect a partial rehabilitation of their daughter at the expense of an innocent wife.

The judgment should be reversed and a new trial ordered, with costs to the appellant to abide the event.—*The Albany Law Journal.*

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Legal Laugh:—"Your worship," said the wily solicitor, who was defending the stalwart prisoner in the dock, "you cannot possibly convict my client of house-breaking. I submit, sir, with all deference, that neither morally nor legally can you convict him. I will tell you why.

"Mr. Sikes, here, as the evidence clearly proves, did not break into any house at all. He found the parlor window open, as the

witnesses admit, and all he did was to put in his right arm and remove some unimportant articles. Now, sir, Mr. Sikes' arm is not he himself, and I fail to see how you can punish the whole individual for an offence committed by only one of his limbs."

"Very well, sir," said the cautious Solomon of the Bench, "I have heard of a similar defence before to-day, so I find the prisoner's arm guilty, and sentence it to six months' imprisonment. The gentleman himself can accompany it or not, as he chooses. Mr. Clerk, read that sentence."

Then Mr. Sikes smiled a fourteen-inch smile, and the plan of the defence became apparent, as he quietly proceeded to unscrew his guilty cork-arm and leave it in the custody of the court.—*Tit-Bits.*

REVIEWS.

The Indian Court Fees Act by Desai Narotam to be had at *Srinivasa Varadachari and Co., Madras*:—Price Rs. 3-0-0.

Mr. Desai Narotam has done a service to the Profession by annotating the Court Fees Act with all the decisions up to date. The Act is a clumsy old piece of work and the language and the provisions of the enactment deserve to be entirely overhauled. It is much to be regretted that an enactment which has to be constantly referred to should be so poorly drafted. Every annotation, therefore, which tends to throw light upon the meaning of any section or part of it is welcome. There is no original criticism attempted on the Act or the decisions cited. But we have no doubt that the book will be found useful as a repertory of decisions under the Act.

The Hindu Law by P. Audinarayana Patro, printed at the *Varthamanabarangini Press, Madras.*

We congratulate Mr. Patro on his new work on the Hindu Law. The field cannot be said to have been exhausted by the treatises already extant. The author follows Mr. Cunningham's method of stating the Law in the form of propositions consecutively numbered. Such an attempt has the necessary drawback of the absence of strict accuracy in the statement of the propositions. The author has made a useful departure in inserting the Sanskrit Texts upon which his propositions

are based. Much of it is necessarily elementary, but we are glad to note that in the chapter on Inheritance he has inserted the rules regarding pollution and inserted the list of persons qualified to perform the Sradh in the order of their competency. We hope that the book will be of use to the legal profession.